

SUBCHAPTER III

FARMLAND PRESERVATION ZONING

91.30 Authority to adopt. A political subdivision may adopt a farmland preservation zoning ordinance.

91.32 Certified ordinance. The following zoning ordinances are certified, for the purposes of this chapter and s. 71.613:

(1) An exclusive agricultural use zoning ordinance that was certified under s. 91.06, 2007 stats., if the certification has not expired or been withdrawn.

(2) A farmland preservation zoning ordinance that was certified under s. 91.36 if the certification has not expired or been withdrawn.

91.34 Expiration of zoning certification. (1) The certification of a farmland preservation zoning ordinance that was certified under s. 91.06, 2007 stats., expires on the date provided in the certification or, if the certification does not provide an expiration date, on the following date:

(a) December 31, 2012, for a county with an increase in population per square mile of more than 9 percent or a city, village, or town in such a county.

(b) December 31, 2013, for a county with an increase in population per square mile of more than 3.75 percent but not more than 9 percent or a city, village, or town in such a county.

(c) December 31, 2014, for a county with an increase in population per square mile of more than 1.75 percent but not more than 3.75 percent or a city, village, or town in such a county.

(d) December 31, 2015, for a county with an increase in population per square mile of more than 0.8 percent but not more than 1.75 percent or a city, village, or town in such a county.

1 (e) December 31, 2016, for a county with an increase in population per square
2 mile of not more than 0.8 percent or a city, village, or town in such a county.

3 (2) The certification of a farmland preservation zoning ordinance that the
4 department certifies under s. 91.36 expires on the date specified under s. 91.36 (2).

5 (3) For the purposes of sub. (1), a county's increase in population per square
6 mile is the percentage by which the county's population per square mile based on the
7 department of administration's 2007 population estimate under s. 16.96 exceeds the
8 county's population per square mile based on the 2000 federal census.

9 **91.36 Certification of zoning ordinance by the department. (1)**

10 GENERAL. The department may certify a farmland preservation zoning ordinance or
11 an amendment to a farmland preservation zoning ordinance as provided in this
12 section.

13 (2) CERTIFICATION PERIOD. (a) The department may certify a farmland
14 preservation zoning ordinance for a period that does not exceed 10 years. The
15 department shall specify the expiration date of the certification of the farmland
16 preservation zoning ordinance in the certification.

17 (b) The certification of an amendment to a certified farmland preservation
18 zoning ordinance expires on the date that the certification of the farmland
19 preservation zoning ordinance expires, except that the department may treat a
20 comprehensive revision of a certified farmland preservation zoning ordinance as a
21 new farmland preservation zoning ordinance and specify an expiration date for the
22 certification of the revised farmland preservation zoning ordinance as provided in
23 par. (a).

24 (3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a farmland
25 preservation zoning ordinance or amendment to a farmland preservation zoning

1 ordinance based on statements submitted under s. 91.40 (3) and (4), without
2 conducting any additional review or audit.

3 (b) The department may do any of the following before it certifies a farmland
4 preservation zoning ordinance or amendment:

5 1. Review the farmland preservation zoning ordinance or amendment for
6 compliance with the requirements under s. 91.38.

7 2. Review and independently verify the application for certification, including
8 the statements under s. 91.40 (3) and (4).

9 (4) DENIAL OF CERTIFICATION. The department shall deny an application for
10 certification of a farmland preservation zoning ordinance or amendment if the
11 department finds any of the following:

12 (a) That the farmland preservation zoning ordinance or amendment does not
13 comply with the requirements in s. 91.38.

14 (b) That the application for certification does not comply with s. 91.40.

15 (5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an
16 application for certification under this section no more than 90 days after the day on
17 which the political subdivision submits a complete application, unless the political
18 subdivision agrees to an extension. The department shall issue its decision in the
19 form required by s. 227.47 (1).

20 (6) CONDITIONAL CERTIFICATION. The department may grant an application for
21 certification under this section subject to conditions specified by the department in
22 its decision under sub. (5). The department may certify a farmland preservation
23 zoning ordinance or amendment contingent upon the political subdivision adopting
24 the farmland preservation zoning ordinance or amendment as certified.

1 (7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes
2 effect on the day on which the department issues the certification, except that if the
3 department specifies conditions under sub. (6), the certification takes effect on the
4 day on which the department determines that the political subdivision has met the
5 conditions.

6 (8) AMENDMENTS TO ORDINANCES; CERTIFICATION. (a) Except as provided in par.
7 (b), an amendment to a certified farmland preservation zoning ordinance is
8 automatically considered to be certified as part of the certified farmland preservation
9 zoning ordinance.

10 (b) An amendment to a certified farmland preservation zoning ordinance that
11 is one of the following and that is adopted after the effective date of this paragraph
12 [LRB inserts date], is not automatically considered to be certified:

13 1. An amendment that is a comprehensive revision of a certified farmland
14 preservation zoning ordinance.

15 2. An amendment that extends coverage of a certified farmland preservation
16 zoning ordinance to a town that was not previously covered.

17 3. An amendment of a type specified by the department by rule that may
18 materially affect compliance of the certified farmland preservation zoning ordinance
19 with the requirements under s. 91.38.

20 (c) The department may withdraw certification of a farmland preservation
21 zoning ordinance if, as a result of an amendment adopted after the effective date of
22 this paragraph [LRB inserts date], the amended farmland preservation zoning
23 ordinance fails to comply with the requirements under s. 91.38. This paragraph
24 applies regardless of whether the farmland preservation zoning ordinance was
25 originally certified under s. 91.06, 2007 stats., or under this section.

1 (d) A political subdivision shall notify the department in writing whenever the
2 political subdivision adopts a material amendment to a certified farmland
3 preservation zoning ordinance. The political subdivision shall include a copy of the
4 amendment in the notice. For the purposes of this paragraph, an amendment that
5 rezones land out of a farmland preservation zoning district is not a material
6 amendment.

***NOTE: How would a political subdivision know whether an amendment is
material? Is that intended to refer to amendments described in par. (b) 1. to 3.?

7 **91.38 Requirements for certification of ordinance.** (1) A farmland
8 preservation zoning ordinance does not qualify for certification under s. 91.36 unless
9 all of the following apply:

10 (a) The farmland preservation zoning ordinance includes jurisdictional,
11 organizational, and enforcement provisions that are necessary for proper
12 administration.

13 (c) The farmland preservation zoning ordinance clearly designates farmland
14 preservation zoning districts in which land uses are limited in compliance with s.
15 91.42.

16 (d) The farmland preservation zoning ordinance includes maps that clearly
17 delineate each farmland preservation zoning district, so that a reader can easily
18 determine whether a parcel is within a farmland preservation zoning district; that
19 are correlated to the text under par. (e); and that comply with technical specifications
20 that the department establishes by rule.

21 (e) The text of the farmland preservation zoning ordinance clearly describes the
22 types of land uses authorized in each farmland preservation zoning district.

1 (f) The farmland preservation zoning ordinance is substantially consistent
2 with a certified farmland preservation plan.

3 (g) Except as provided by the department by rule, land is not included in a
4 farmland preservation zoning district unless the land is included in a farmland
5 preservation area identified in the county certified farmland preservation plan.

6 (h) If an overlay district, such as an environmental corridor, is superimposed
7 on a farmland preservation zoning district, all of the following apply:

8 1. The farmland preservation zoning ordinance clearly identifies the overlay
9 district as such.

10 2. The overlay district is shown on the maps under par. (d) in a way that allows
11 a reader to easily identify the underlying farmland preservation zoning district and
12 its boundaries.

13 3. The overlay district does not remove land use restrictions from the
14 underlying farmland preservation zoning district.

15 (i) The farmland preservation zoning ordinance complies with any other
16 requirements that the department specifies by rule.

17 (2) An amendment to a farmland preservation zoning ordinance qualifies for
18 certification under s. 91.36 if it complies with all of the requirements in sub. (1) that
19 are relevant to the amendment and it does not cause the farmland preservation
20 zoning ordinance to violate any of the requirements in sub. (1).

21 **91.40 Applying for certification of ordinance.** A political subdivision
22 seeking certification of a farmland preservation zoning ordinance or amendment to
23 a farmland preservation zoning ordinance shall submit all of the following to the
24 department in writing, along with any other relevant information that the political
25 subdivision chooses to provide:

1 (1) The complete farmland preservation zoning ordinance or amendment
2 proposed for certification.

3 (2) All of the following background information:

4 (a) A concise summary of the farmland preservation zoning ordinance or
5 amendment, including key changes from any previously certified farmland
6 preservation zoning ordinance.

7 (b) A concise summary of the process by which the farmland preservation
8 zoning ordinance or amendment was developed, including public hearings, notice to
9 and involvement of other governmental units, approval by the political subdivision,
10 and identification of any key unresolved issues with other governmental units
11 related to the farmland preservation zoning ordinance or amendment.

12 (c) A description of the relationship of the farmland preservation zoning
13 ordinance or amendment to the county certified farmland preservation plan,
14 including any material inconsistencies between the farmland preservation zoning
15 ordinance or amendment and the county certified farmland preservation plan.

16 (3) A statement, signed by the county planning director or the chief elected
17 official, certifying that the farmland preservation zoning ordinance or amendment
18 complies with s. 91.38 (1) (g) and (h).

19 (4) A statement, signed by the applicant's attorney or chief elected official,
20 certifying that the farmland preservation zoning ordinance or amendment complies
21 with all applicable requirements in s. 91.38.

22 (5) Other relevant information that the department requires by rule.

23 **91.42 Land use in farmland preservation zoning districts; general.** A
24 farmland preservation zoning ordinance does not qualify for certification under s.

1 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland
2 preservation zoning district other than the following land uses:

3 (1) Uses identified as permitted uses in s. 91.44.

4 (2) Uses identified as conditional uses in s. 91.46.

5 (3) Prior nonconforming uses, subject to the following:

6 (a) A prior nonconforming use that is a residence may be expanded or
7 remodeled, as long as there is no increase in the number of dwelling units in the
8 residence.

9 (b) A prior nonconforming use that is not a residence may continue without
10 further approval unless it is materially altered.

11 (c) The proposed farmland preservation zoning districts under the farmland
12 preservation zoning ordinance contain only isolated prior nonconforming uses.

13 (4) Other uses allowed by the department by rule.

14 **91.44 Permitted uses.** (1) A farmland preservation zoning ordinance does
15 not comply with s. 91.42 if the farmland preservation zoning ordinance allows as a
16 permitted use in a farmland preservation zoning district a land use other than the
17 following land uses:

18 (a) Agricultural uses.

19 (b) Accessory uses.

20 (c) Agriculture-related uses.

21 (d) Nonfarm residences constructed in a rural residential cluster in accordance
22 with an approval of the cluster as a conditional use under s. 91.46 (1) (e).

23 (e) Undeveloped natural resource and open space areas.

24 (f) A transportation, utility, communication, or other use that is required under
25 state or federal law to be located in a specific place or that is authorized to be located

1 in a specific place under a state or federal law that preempts the requirement of a
2 conditional use permit for that use.

3 (g) Other uses identified by the department by rule.

4 (2) The department may promulgate rules imposing additional limits on the
5 permitted uses that may be allowed in a farmland preservation zoning district in
6 order for a farmland preservation zoning ordinance to comply with s. 91.42.

7 **91.46 Conditional uses.** (1) GENERAL. A farmland preservation zoning
8 ordinance does not comply with s. 91.42 if the farmland preservation zoning
9 ordinance allows as a conditional use in a farmland preservation zoning district a
10 land use other than the following land uses:

11 (a) Agricultural uses.

12 (b) Accessory uses.

13 (c) Agriculture-related uses.

14 (d) Nonfarm residences that qualify under sub. (2) or that meet more restrictive
15 standards in the farmland preservation zoning ordinance.

16 (e) Nonfarm residential clusters that qualify under sub. (3) or that meet more
17 restrictive standards in the farmland preservation zoning ordinance.

18 (f) Transportation, communications, pipeline, electric transmission, utility, or
19 drainage uses that qualify under sub. (4).

20 (g) Governmental, institutional, religious, or nonprofit community uses, other
21 than uses covered by par. (f), that qualify under sub. (5).

22 (h) Nonmetallic mineral extraction that qualifies under sub. (6).

23 (i) Oil and gas exploration or production that is licensed by the department of
24 natural resources under subch. II of ch. 295.

25 (j) Other uses allowed by the department by rule.

1 **(1m) ADDITIONAL LIMITATIONS.** The department may promulgate rules imposing
2 additional limits on the conditional uses that may be allowed in a farmland
3 preservation zoning district in order for a farmland preservation zoning ordinance
4 to comply with s. 91.42.

5 **(2) NONFARM RESIDENCES.** A nonfarm residence qualifies for the purposes of sub.
6 (1) (d) if the political subdivision determines that all of the following apply:

7 (a) The ratio of nonfarm residential acreage to farm acreage on the base farm
8 tract on which the nonfarm residence will be located will not be greater than 1 to 20
9 after the nonfarm residence is constructed.

10 (b) There will not be more than 4 dwelling units in nonfarm residences, nor
11 more than 5 dwelling units in residences of any kind, on the base farm tract after the
12 nonfarm residence is constructed.

13 (c) The location of the proposed nonfarm residential parcel, and the location of
14 the nonfarm residence on that nonfarm residential parcel, will not do any of the
15 following:

16 1. Convert prime farmland from agricultural use or convert land previously
17 used as cropland, other than a woodlot, from agricultural use if on the farm there are
18 reasonable alternative locations for a nonfarm residential parcel or nonfarm
19 residence.

20 2. Significantly impair or limit the current or future agricultural use of other
21 protected farmland.

22 **(3) NONFARM RESIDENTIAL CLUSTER.** A political subdivision may issue one
23 conditional use permit that covers more than one nonfarm residence in a qualifying
24 nonfarm residential cluster. A nonfarm residential cluster qualifies for the purposes
25 of sub. (1) (e) if all of the following apply:

1 (a) The parcels on which the nonfarm residences would be located are
2 contiguous.

3 (b) The political subdivision imposes legal restrictions on the construction of
4 the nonfarm residences so that if all of the nonfarm residences were constructed,
5 each would satisfy the requirements under sub. (2).

6 (4) TRANSPORTATION, COMMUNICATIONS, PIPELINE, ELECTRIC TRANSMISSION, UTILITY,
7 OR DRAINAGE USE. A transportation, communications, pipeline, electric transmission,
8 utility, or drainage use qualifies for the purposes of sub. (1) (f) if the political
9 subdivision determines that all of the following apply:

10 (a) The use and its location in the farmland preservation zoning district are
11 consistent with the purposes of the farmland preservation zoning district.

12 (b) The use and its location in the farmland preservation zoning district are
13 reasonable and appropriate, considering alternative locations, or are specifically
14 approved under state or federal law.

15 (c) The use is reasonably designed to minimize conversion of land, at and
16 around the site of the use, from agricultural use or open space use.

17 (d) The use does not substantially impair or limit the current or future
18 agricultural use of surrounding parcels of land that are zoned for or legally restricted
19 to agricultural use.

20 (e) Construction damage to land remaining in agricultural use is minimized
21 and repaired, to the extent feasible.

22 (5) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE. A
23 governmental, institutional, religious, or nonprofit community use qualifies for the
24 purposes of sub. (1) (g) if the political subdivision determines that all of the following
25 apply:

1 (a) The use and its location in the farmland preservation zoning district are
2 consistent with the purposes of the farmland preservation zoning district.

3 (b) The use and its location in the farmland preservation zoning district are
4 reasonable and appropriate, considering alternative locations, or are specifically
5 approved under state or federal law.

6 (c) The use is reasonably designed to minimize the conversion of land, at and
7 around the site of the use, from agricultural use or open space use.

8 (d) The use does not substantially impair or limit the current or future
9 agricultural use of surrounding parcels of land that are zoned for or legally restricted
10 to agricultural use.

****NOTE: I made the requested change, replacing "protected farmland," which is
a defined term. Are you sure you want that change?

11 (e) Construction damage to land remaining in agricultural use is minimized
12 and repaired, to the extent feasible.

13 (6) NONMETALLIC MINERAL EXTRACTION. Nonmetallic mineral extraction
14 qualifies for the purposes of sub. (1) (h) if the political subdivision determines that
15 all of the following apply:

16 (a) The operation complies with subch. I of ch. 295 and rules promulgated under
17 that subchapter, with applicable provisions of the local ordinance under s. 295.13 or
18 295.14, and with any applicable requirements of the department of transportation
19 concerning the restoration of nonmetallic mining sites.

20 (b) The operation and its location in the farmland preservation zoning district
21 are consistent with the purposes of the farmland preservation zoning district.

22 (c) The operation and its location in the farmland preservation zoning district
23 are reasonable and appropriate, considering alternative locations outside the

1 farmland preservation zoning district, or are specifically approved under state or
2 federal law.

3 (d) The operation is reasonably designed to minimize the conversion of land
4 around the extraction site from agricultural use or open space use.

5 (e) The operation does not substantially impair or limit the current or future
6 agricultural use of surrounding parcels of land that are zoned for or legally restricted
7 to agricultural use.

8 (f) The farmland preservation zoning ordinance requires the owner to restore
9 the land to agricultural use, consistent with any required locally approved
10 reclamation plan, when extraction is completed.

11 **91.48 Rezoning of land out of a farmland preservation zoning district.**

12 (1) A political subdivision with a certified farmland preservation zoning ordinance
13 may rezone land out of a farmland preservation zoning district without having the
14 rezoning certified under s. 91.36, if all of the following apply:

15 (a) The political subdivision finds all of the following, after public hearing:

16 1. The land is better suited for a use not allowed in the farmland preservation
17 zoning district.

18 2. The rezoning is consistent with any applicable comprehensive plan.

19 3. The rezoning is substantially consistent with the county certified farmland
20 preservation plan.

21 4. The rezoning will not substantially impair or limit current or future
22 agricultural use of surrounding parcels of land that are zoned for or legally restricted
23 to agricultural use.

24 (b) The owner of the land pays to the political subdivision, for each rezoned acre
25 or portion thereof, a conversion fee equal to the greater of the following:

1 1. Three times the per acre value, for the year in which the land is rezoned, of
2 the highest value category of tillable cropland in the town in which the rezoned land
3 is located, as specified by the department of revenue under s. 73.03 (2a).

4 2. An amount specified in the certified farmland preservation zoning
5 ordinance.

6 (2) A political subdivision shall annually provide all of the following to the
7 department and, if the political subdivision is not a county, to the county:

8 (a) A description of the amount of land that the political subdivision has
9 rezoned out of a farmland preservation zoning district since the effective date of this
10 paragraph [LRB inserts date], or since the date it last complied with this
11 subsection, whichever is later, and a map that clearly shows the location of the land.

12 (b) A description of the amount of revenue that the political subdivision
13 received as conversion fees under sub. (1) (b) since the effective date of this
14 paragraph [LRB inserts date], or since the date it last complied with this
15 subsection, whichever is later.

16 **91.49 Use of conversion fees.** A political subdivision shall use conversion
17 fees received under s. 91.48 (1) (b) for its costs related to farmland preservation
18 planning, zoning, or compliance monitoring.

19 **91.50 Exemption from special assessments.** (1) Except as provided in sub.
20 (3), no political subdivision, special purpose district, or other local governmental
21 entity may levy a special assessment for sanitary sewers or water against land in
22 agricultural use, if the land is located in a farmland preservation zoning district.

23 (2) A political subdivision, special purpose district, or other local governmental
24 entity may deny the use of improvements for which the special assessment is levied
25 to land that is exempt from the assessment under sub. (1).

(3) The exemption under sub. (1) does not apply to an assessment that an owner voluntarily pays, after the assessing authority provides notice of the exemption under sub. (1).

SUBCHAPTER IV

FARMLAND PRESERVATION AGREEMENTS

91.60 Farmland preservation agreements; general. (1) AGREEMENTS AUTHORIZED. The department may enter into a farmland preservation agreement that complies with s. 91.62 with the owner of land that is eligible under sub. (2).

(2) ELIGIBLE LAND. Land is eligible if all of the following apply:

(a) The land consists of at least 35 contiguous acres on a farm that produced at least \$6,000 in gross farm profits during the taxable year preceding the year in which the owner applies for a farmland preservation agreement or a total of at least \$18,000 in gross farm profits during the last 3 taxable years preceding the year in which the owner applies for a farmland preservation agreement.

(b) The land is located in a farmland preservation area identified in a certified farmland preservation plan.

(c) The land is in an agricultural enterprise area designated under s. 91.84.

(3) PRIOR AGREEMENTS. (a) Except as provided in par. (c) or s. 91.66, a farmland preservation agreement entered into before the effective date of this paragraph [LRB inserts date], remains in effect for the term specified in the agreement and under the terms that were agreed upon when the agreement was last created, extended, or renewed.

(b) The department may not extend or renew a farmland preservation agreement entered into before the effective date of this paragraph [LRB inserts date].

1 (c) The department and an owner of land who entered into a farmland
2 preservation agreement before the effective date of this paragraph [LRB inserts
3 date] may agree to modify the a farmland preservation agreement in order to allow
4 the owner to claim the tax credit under s. 71.613 rather than the tax credit for which
5 the owner would otherwise be eligible.

****NOTE: The proposed language seemed to say that an agreement could be changed only if the change both allowed the owner to claim the credit created by this bill and allowed the agreement to be terminated under s. 91.66. I think that s. 91.66 already allows old agreements to be terminated if the requirements in s. 91.66 are met. Note that s. 91.60 (3) (a) indicates that through the cross-reference to s. 91.66. Perhaps I am not understanding the intent of proposed s. 91.60 (3). Please let me know.

6 **91.62 Farmland preservation agreements; requirements. (1) CONTENTS.**

7 The department may not enter into a farmland preservation agreement unless the
8 agreement does all of the following:

9 (a) Specifies a term of at least 15 years.

10 (b) Includes a correct legal description of the tract of land covered by the
11 farmland preservation agreement.

12 (c) Includes provisions that restrict the tract of land to the following uses:

13 1. Agricultural uses and accessory uses.

14 2. Undeveloped natural resource and open space uses.

15 (2) FORM. The department shall specify a form for farmland preservation
16 agreements that complies with s. 59.43 (2m).

17 (3) EFFECTIVENESS. A farmland preservation agreement takes effect when it is
18 signed by all owners of the land covered by the farmland preservation agreement and
19 by the department.

20 (4) RECORDING. The department shall provide a copy of a signed farmland
21 preservation agreement to a person designated by the signing owners and shall

1 promptly present the signed agreement to the register of deeds for the county in
2 which the land is located for recording.

3 (5) CHANGE OF OWNERSHIP. A farmland preservation agreement is binding on
4 a person who purchases land during the term of a farmland preservation agreement
5 that covers the land.

6 **91.64 Applying for a farmland preservation agreement.** (1) SUBMITTING
7 AN APPLICATION. An owner who wishes to enter into a farmland preservation
8 agreement shall submit an application, on a form provided by the department, to the
9 county clerk of the county in which the land is located.

10 (2) CONTENTS OF APPLICATION. A person submitting an application under sub.
11 (1) shall include all of the following in the application:

12 (a) The name and address of each person who has an ownership interest in the
13 land proposed for coverage by the agreement.

14 (b) The location of the land proposed for coverage, indicated by street address,
15 global positioning system coordinates, or township, range, and section.

16 (c) The legal description of the land proposed for coverage.

17 (d) A map or aerial photograph of the land proposed for coverage, showing
18 parcel boundaries, residences and other structures, and significant natural features.

19 (e) Information showing that the land proposed for coverage is eligible under
20 s. 91.60 (2).

21 (f) A description of every existing mortgage, easement, and lien, other than
22 liens on growing crops, on land proposed for coverage, including the name and
23 address of the person holding the lien, mortgage, or easement.

24 (g) A signed agreement from each person required to be identified under par.
25 (f) subordinating the person's lien, mortgage, or easement to the agreement.

1 (h) Any other information required by the department by rule.

2 (i) Any fee under sub. (2m).

3 **(2m) COUNTY PROCESSING FEE.** A county may charge a reasonable fee for
4 processing an application for a farmland preservation agreement.

5 **(3) COUNTY REVIEW.** (a) A county shall review an application under sub. (2) to
6 determine whether the land proposed for coverage meets the requirements under s.
7 91.60 (2) (b) and (c). The county shall provide its findings to the applicant in writing
8 within 60 days after the day on which the county clerk receives a complete
9 application.

10 (b) If the county finds under par. (a) that the land proposed for coverage meets
11 the requirements under s. 91.60 (2) (b) and (c), the county shall promptly send all of
12 the following to the department, along with any other comments that the county
13 chooses to provide:

14 1. The original application, including all of the information provided with the
15 application.

16 2. A copy of the county's findings.

17 **(4) DEPARTMENT ACTION ON APPLICATION.** (a) The department may prepare a
18 farmland preservation agreement that complies with s. 91.62 and enter into the
19 farmland preservation agreement under s. 91.60 (1) based on a complete application
20 and on county findings under sub. (3) (b).

21 (b) The department may decline to enter into a farmland preservation
22 agreement for any of the following reasons:

23 1. The application is incomplete.

24 2. The land is not eligible land under s. 91.60 (2).

1 **91.66 Terminating a farmland preservation agreement.** (1) The
2 department may terminate a farmland preservation agreement or release land from
3 a farmland preservation agreement at any time if all of the following apply:

4 (a) All of the owners of land covered by the farmland preservation agreement
5 consent to the termination or release, in writing.

6 (b) The department finds that the termination or release will not impair or limit
7 agricultural use of other protected farmland.

8 (c) The owners of the land pay to the county in which the land is located, for each
9 acre or portion thereof released from the farmland preservation agreement, a
10 conversion fee equal to the greater of the following:

11 1. Three times the per acre value, for the year in which the farmland
12 preservation agreement is terminated or the land is released, of the highest value
13 category of tillable cropland in the town in which the land is located, as specified by
14 the department of revenue under s. 73.03 (2a).

15 2. An amount specified by the county by ordinance.

16 **(2)** The department shall provide a copy of its decision to terminate a farmland
17 preservation agreement or release land from a farmland preservation agreement to
18 a person designated by the owners of the land and shall present a copy of the decision
19 to the register of deeds for the county in which the land is located for recording.

20 **91.68 Violations of farmland preservation agreements.** (1) The
21 department may bring an action in circuit court to do any of the following:

22 (a) Enforce a farmland preservation agreement.

23 (b) Restrain, by temporary or permanent injunction, a change in land use that
24 violates a farmland preservation agreement.

1 (c) Seek a civil forfeiture for a change in land use that violates a farmland
2 preservation agreement.

3 (2) A forfeiture under sub. (1) (c) may not exceed twice the fair market value
4 of the land covered by the agreement at the time of the violation.

5 **91.70 Farmland preservation agreements; exemption from special**
6 **assessments.** (1) Except as provided in sub. (3), no political subdivision, special
7 purpose district, or other local governmental entity may levy a special assessment
8 for sanitary sewers or water against land in agricultural use, if the land is covered
9 by a farmland preservation agreement.

10 (2) A political subdivision, special purpose district or other local governmental
11 entity may deny the use of improvements for which the special assessment is levied
12 to land that is exempt from the assessment under sub. (1).

13 (3) The exemption under sub. (1) does not apply to an assessment that an owner
14 voluntarily pays, after the assessing authority provides notice of the exemption
15 under sub. (1).

16 SUBCHAPTER V

17 SOIL AND WATER CONSERVATION

18 **91.80 Soil and water conservation by persons claiming tax credits.** An
19 owner claiming farmland preservation tax credits under s. 71.613 shall comply with
20 applicable land and water conservation standards promulgated by the department
21 under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c).

22 **91.82 Compliance monitoring.** (1) COUNTY RESPONSIBILITY. (a) A county
23 land conservation committee shall monitor compliance with s. 91.80.

1 (b) For the purpose of par. (a), a county land conservation committee shall
2 inspect each farm for which the owner claims farmland preservation tax credits
3 under subch. IX of ch. 71 at least once every 4 years.

4 (c) For the purpose of par (a), a county land conservation committee may do any
5 of the following:

6 1. Inspect land that is covered by a farmland preservation agreement or
7 farmland preservation zoning and that is in agricultural use.

8 2. Require an owner to certify, not more than annually, that the owner complies
9 with s. 91.80.

10 (d) At least once every 4 years, the department shall review each county land
11 conservation committee's compliance with par. (b).

12 (2) NOTICE OF NONCOMPLIANCE. (a) A county land conservation committee may
13 issue a written notice of noncompliance to an owner if the committee finds that the
14 owner has done any of the following:

***NOTE: Should committees be required, rather than authorized, to issue notices?
See current s. 92.105 (5).

15 1. Failed to comply with s. 91.80.

16 2. Failed to permit a reasonable inspection under sub. (1) (c) 1.

17 3. Failed to certify compliance as required under sub. (1) (c) 2.

18 (b) A county land conservation committee shall provide to the department of
19 revenue a copy of each notice of noncompliance issued under par. (a).

20 (c) If a county land conservation committee determines that an owner has
21 corrected the failure described in a notice of noncompliance under par. (a), it shall
22 withdraw the notice of noncompliance and notify the owner and the department of
23 revenue of the withdrawal.

(3) **PROCEDURE.** The department may promulgate rules prescribing procedures for the administration of this section by land conservation committees.

SUBCHAPTER VI

AGRICULTURAL ENTERPRISE AREAS

91.84 Agricultural enterprise areas; general. (1) DESIGNATION. (a) 1. The department may by rule designate agricultural enterprise areas targeted for agricultural preservation and development.

2. The department may by rule modify or terminate the designation of an agricultural enterprise area.

(b) Subject to par. (c), the department may designate agricultural enterprise areas with a combined area of not more than 1,000,000 acres of land.

(c) Before January 1, 2012, the department may designate not more than 10 agricultural enterprise areas with a combined area of not more than 200,000 acres of land.

(e) The department may not designate an area as an agricultural enterprise area unless all of the following apply:

1. The department receives a petition requesting the designation and the petition complies with s. 91.86.

2. The area consists of at least 1,000 acres of land.

3. The parcels in the area are contiguous. Parcels that are only separated by a lake, stream, or transportation or utility right-of-way are contiguous for the purposes of this subdivision.

4. The area is located entirely in a farmland preservation area identified in a certified farmland preservation plan.

5. The land in the area is primarily in agricultural use.

1 **(2) EMERGENCY RULES.** The department may use the procedure under s. 227.24
2 to promulgate a rule designating an agricultural preservation area or modifying or
3 terminating the designation of an agricultural preservation area. Notwithstanding
4 s. 227.24 (1) (c) and (2), a rule promulgated under this subsection remains in effect
5 until the department modifies or repeals the rule. Notwithstanding s. 227.24 (1) (a)
6 and (3), the department is not required to determine that promulgating a rule under
7 this subsection as an emergency rule is necessary for the preservation of the public
8 peace, health, safety, or welfare and is not required to provide a finding of emergency
9 for a rule promulgated under this subsection.

10 **(3) EFFECT OF DESIGNATION.** The designation of an area under sub. (1) allows
11 owners of eligible land within the area to enter into farmland preservation
12 agreements with the department. If the department modifies or terminates the
13 designation of an area under sub. (1) and that modification or termination results in
14 land covered by a farmland preservation agreement no longer being located in a
15 designated area, the farmland preservation agreement remains in effect for the
16 remainder of its term, but the department may not extend or renew the farmland
17 preservation agreement.

18 **(4) MAP.** In a rule designating an agricultural enterprise area, the department
19 shall include a map that clearly shows the boundaries of the proposed agricultural
20 enterprise area so that a reader can easily determine whether a parcel of land is
21 located within the agricultural enterprise area.

22 **(5) EFFECTIVE DATE OF DESIGNATION.** The designation of an agricultural
23 enterprise area takes effect on January 1 of the calendar year following the year in
24 which the rule designating the area is published, unless the rule specifies a later
25 effective date.

1 **91.86 Agricultural enterprise area; petition.** (1) DEFINITION. In this
2 section, "eligible farm" means a farm that includes at least 35 contiguous acres of
3 land and that produced at least \$6,000 in gross farm profits during the taxable year
4 preceding the year in which a petition is filed requesting the department to designate
5 an area in which the farm is located as an agricultural enterprise area or a total of
6 at least \$18,000 in gross farm profits during the 3 taxable years preceding the year
7 in which a petition is filed.

8 (2) PETITIONERS. (a) The department may consider a petition requesting that
9 it designate an area as an agricultural enterprise area if all of the following jointly
10 file the petition:

11 1. Each political subdivision in which any part of the proposed agricultural
12 enterprise area is located.

13 2. Owners of at least 5 eligible farms located in the area.

14 (b) Each petitioner under par. (a) who is an individual shall sign the petition.
15 For a petitioner that is not an individual, an authorized officer or representative
16 shall sign the petition.

17 (3) CONTENTS OF PETITION. (a) The department may not approve a petition
18 requesting that it designate an area as an agricultural enterprising area unless the
19 petition contains all of the following:

20 1. The correct legal name and principal address of each petitioner.

21 2. A summary of the petition that includes the purpose and rationale for the
22 petition.

23 3. A map that clearly shows the boundaries of the proposed agricultural
24 enterprise area so that a reader can easily determine whether a parcel of land is
25 located within the proposed area.

1 4. Information showing that the proposed agricultural enterprise area meets
2 the requirements under s. 91.84 (1) (e).

3 5. A clear description of current land uses in the proposed agricultural
4 enterprise area, including current agricultural uses, agriculture-related uses,
5 transportation, utility, energy, and communication uses, and undeveloped natural
6 resource and open space uses.

7 6. A clear description of the agricultural land use and development goals for
8 the proposed agricultural enterprise area, including proposed agricultural uses,
9 agriculture-related uses, and relevant transportation, utility, energy, and
10 communication uses.

11 7. A plan for achieving the goals under subd. 6., including any planned
12 investments, grants, development incentives, cooperative agreements, land or
13 easement purchases, land donations, and promotion and public outreach activities.

14 8. A description of any current or proposed land use controls in the proposed
15 agricultural enterprise area, including farmland preservation agreements.

16 (b) Petitioners under sub. (2) may include in the petition the names and
17 addresses of other persons who propose to cooperate in achieving the goals under par.
18 (a) 6.

19 **91.88 Grants for preparing petitions.** (1) From the appropriation under
20 s. 20.115 (7) (dr), the department may award a grant of up to \$20,000 to a political
21 subdivision to provide reimbursement for up to 50 percent of the political
22 subdivision's cost of preparing a petition under s. 91.86 requesting the department
23 to designate an agricultural enterprise area.

24 (2) The department shall enter into a contract with a political subdivision to
25 which it awards a planning grant under sub. (1) before the department distributes

1 any grant funds to the political subdivision. In the contract, the department shall
2 identify purposes for which the grant is awarded and the costs that are eligible for
3 reimbursement through the grant.

4 (3) The department may distribute grant funds under this section only after
5 the political subdivision shows that it has incurred costs that are eligible for
6 reimbursement under sub. (2). The department may not distribute more than 50
7 percent of the amount of a grant under this section for a proposed petition before the
8 political subdivision submits a complete petition.

9 (4) The department may not enter into a contract under sub. (2) after June 30,
10 2012.

11 **SECTION 43.** 92.04 (2) (c) of the statutes is repealed.

12 **SECTION 44.** 92.05 (3) (L) of the statutes is amended to read:

13 92.05 (3) (L) *Technical assistance; performance standards.* The department
14 shall provide technical assistance to county land conservation committees and local
15 units of government for the development of ordinances that implement standards
16 adopted under s. 92.07 (2), ~~92.105 (1)~~, 92.15 (2) or (3) or 281.16 (3). The department's
17 technical assistance shall include preparing model ordinances, providing data
18 concerning the standards and reviewing draft ordinances to determine whether the
19 draft ordinances comply with applicable statutes and rules.

20 **SECTION 45.** 92.104 of the statutes is repealed.

21 **SECTION 46.** 92.105 of the statutes is repealed.

22 **SECTION 47.** 92.106 of the statutes is repealed.

23 **SECTION 48.** 92.14 (2) (e) of the statutes is amended to read:

1 92.14 (2) (e) Promoting ~~compliance with the requirements under ss. 92.104 and~~
2 92.105 soil and water conservation by persons claiming ~~a~~ farmland preservation
3 credit tax credits under subch. IX of ch. 71.

4 **SECTION 49.** 92.14 (3) (a) 1. of the statutes is amended to read:

5 92.14 (3) (a) 1. Compliance with soil and water conservation requirements
6 under ~~ss. 92.104 and 92.105~~ by applicable to persons claiming ~~a~~ farmland
7 preservation credit tax credits under subch. IX of ch. 71.

8 **SECTION 50.** 92.14 (3) (d) of the statutes is amended to read:

9 92.14 (3) (d) Implementing land and water resource management projects
10 undertaken to comply with ~~the~~ soil and water conservation requirements under ~~ss.~~
11 92.104 and 92.105 by applicable to persons claiming ~~a~~ farmland preservation credit
12 tax credits under subch. IX of ch. 71.

13 **SECTION 51.** 101.143 (4) (ei) 1m. a. of the statutes is amended to read:

14 101.143 (4) (ei) 1m. a. The owner or operator of the farm tank owns a parcel
15 of 35 or more acres of contiguous land, on which the farm tank is located, which is
16 devoted primarily to agricultural use, as defined in s. 91.01 (1), including land
17 designated by the department of natural resources as part of the ice age trail under
18 s. 23.17, which during the year preceding submission of a first claim under sub. (3)
19 produced gross farm profits, as defined in s. 71.58 (4) 71.613 (1) (g), of not less than
20 \$6,000 or which, during the 3 years preceding that submission produced gross farm
21 profits, as defined in s. 71.58 (4) 71.613 (1) (g), of not less than \$18,000, or a parcel
22 of 35 or more acres, on which the farm tank is located, of which at least 35 acres,
23 during part or all of the year preceding that submission, were enrolled in the
24 conservation reserve program under 16 USC 3831 to 3836.

25 **SECTION 52.** 101.143 (4) (ei) 1m. b. of the statutes is amended to read:

1 101.143 (4) (ei) 1m. b. The claim is submitted by a person who, at the time that
2 the notification was made under sub. (3) (a) 3., was the owner of the farm tank and
3 owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or
4 was located, which was devoted primarily to agricultural use, as defined in s. 91.01
5 (1), including land designated by the department of natural resources as part of the
6 ice age trail under s. 23.17, which during the year preceding that notification
7 produced gross farm profits, as defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of not less than
8 \$6,000 or which, during the 3 years preceding that notification, produced gross farm
9 profits, as defined in s. ~~71.58 (4)~~ 71.613 (1) (g), of not less than \$18,000, or a parcel
10 of 35 or more acres, on which the farm tank is located, of which at least 35 acres,
11 during part or all of the year preceding that notification, were enrolled in the
12 conservation reserve program under 16 USC 3831 to 3836.

13 **SECTION 53.** 165.25 (4) (ar) of the statutes is amended to read:

14 165.25 (4) (ar) The department of justice shall furnish all legal services
15 required by the department of agriculture, trade and consumer protection relating
16 to the enforcement of ss. 91.68, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
17 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
18 100.50, ~~and~~ 100.51, and 100.55, and chs. 126, 136, 344, 704, 707, and 779, together
19 with any other services as are necessarily connected to the legal services.

20 **SECTION 54.** 281.16 (3) (e) of the statutes is amended to read:

21 281.16 (3) (e) An owner or operator of an agricultural facility or practice that
22 is in existence before October 14, 1997, may not be required by this state or a
23 municipality to comply with the performance standards, prohibitions, conservation
24 practices or technical standards under this subsection unless cost-sharing is
25 available, under s. 92.14 or 281.65 or from any other source, to the owner or operator.

1 For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), ~~92.105 (1)~~, 92.15 (4) and
2 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that
3 specify criteria for determining whether cost-sharing is available under s. 281.65
4 and the department of agriculture, trade and consumer protection shall promulgate
5 rules that specify criteria for determining whether cost-sharing is available under
6 s. 92.14 or from any other source. The rules may not allow a determination that
7 cost-sharing is available to meet local regulations under s. 92.07 (2), ~~92.105 (1)~~ or
8 92.15 that are consistent with or that exceed the performance standards,
9 prohibitions, conservation practices or technical standards under this subsection
10 unless the cost-sharing is at least 70% of the cost of compliance or is from 70% to 90%
11 of the cost of compliance in cases of economic hardship, as defined in the rules.

12 **SECTION 55.** 281.65 (5) (b) of the statutes is amended to read:

13 281.65 (5) (b) Prepare sections of the priority watershed or priority lake plan
14 relating to farm-specific implementation schedules, requirements under ~~ss. 92.104~~
15 ~~and 92.105~~ s. 281.16 (3), animal waste management and selection of agriculturally
16 related best management practices and submit those sections to the department for
17 inclusion under sub. (4m) (b). The best management practices shall be cost-effective
18 best management practices, as specified under sub. (4) (e), except in situations in
19 which the use of a cost-effective best management practice will not contribute to
20 water quality improvement or will cause a water body to continue to be impaired as
21 identified to the federal environmental protection agency under 33 USC 1313 (d) (1)
22 (A).

23 **SECTION 56.** 281.65 (5) (d) of the statutes is amended to read:

24 281.65 (5) (d) Develop a grant disbursement and project management schedule
25 for agriculturally related best management practices to be included in a plan

1 established under sub. (4) (g) and identify recommendations for implementing
2 activities or projects under ss. 92.10, ~~92.104 and 92.105~~ and 281.16 (3).

3 **SECTION 57.** 281.65 (5) (e) of the statutes is amended to read:

4 281.65 (5) (e) Identify areas within a priority watershed or priority lake area
5 that are subject to activities required under ss. ~~92.104 and 92.105~~ s. 281.16 (3).

6 **SECTION 58. Initial applicability.**

7 (1) The treatment of section 71.613 of the statutes first applies to taxable years
8 beginning on January 1, 2010.

9 (END)

9343

Revenue

CS
Farmland preservation credit.

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0203/P2dn

RCT/.....

ej

Andrew Miner:

This redraft converts the farmland preservation draft to a DOA budget draft. The content of this version of the draft is identical to the /P1 version, except that I deleted the reference to s. 91.36 (8) (b) in proposed s. 71.613 (2) (intro.) because the referenced provision is now structured in a way that makes the reference inappropriate. The drafter's note for the /P1 is still applicable. ✓

Looking at proposed s. 71.613 (1) (h) and (2), I wonder whether if it would be possible for only part of a farm to be located in a farmland preservation zoning district. If so, it seems as though proposed s. 71.613 (1) (h) 2. should be structured like proposed s. 71.613 (1) (h) 1. ✓

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FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0203/P2dn
RCT:cjs:rs

November 13, 2008

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